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The complaint in this matter was filed on May 4, 2006. Pursuant to Tenn. Code Ann. § 9-8-402(c), the case was transferred to the Claims

Commission from the Division of Claims Administration on August 2, 2006, and an answer was filed by the defendant on September 5, 2006. On August 10, 2006, the Commission entered an initial order governing the proceedings and advising claimant of Tenn. Code Ann § 9-8-402(b), which states:

As provided for under Tenn. Code Ann. § 9-8-402(b), “[a]bsent prior written consent of the commission, it is mandatory that any claim filed with the claims commission upon which no action is taken by the claimant to advance the case to disposition within any one year period of time be dismissed with prejudice.”

On January 16, 2008, because the record reflected no activity in prosecution of the claim, the Commission ordered claimants to show cause why it should not be dismissed pursuant to Tenn. Code Ann § 9-8-402(b). Claimants responded to the Order on February 20, 2008, indicating that a related case in circuit court, which was potentially dispositive of this claim, was set for trial in April and requested that the matter not be dismissed.

After more than a year, on July 27, 2009, defendant moved to dismiss this matter for failure to prosecute, pursuant to Tenn. Code Ann. §

9-8-402(b).¹ The motion, which is supported by an affidavit of counsel, reflects that no steps to prosecute the claim have been taken since its filing.

Claimants do not dispute that no action has been taken with respect to this claim and rely upon the response to the show cause order filed in February of 2008. That response, however, indicated that the related case was to be tried in April of 2008 and requested that this claim remain pending until that resolution. That trial apparently did not occur. Claimants neither notified the Commission of this fact nor sought its written consent to stay this matter.

Although claimants have apparently taken the position that the circuit court claims must be resolved before the instant claim, the rationale for this opinion is unclear. What is clear is that although those claims have been pending for several years now, there has been no showing made that the State was involved in any of the pretrial proceedings in that matter or that any resolution of those claims is imminent.

Because the Commission concludes that no action has been taken to further this claim to disposition in more than one year, dismissal of this

¹ Subsequent to the motion to dismiss, claimant's counsel moved for and obtained permission to withdraw. Claimants were granted thirty (30) days to obtain new counsel, but have apparently not done so as their response and motion to transfer is pro se.

matter is mandated by Tenn. Code Ann. § 9-8-402(b). This claim is therefore dismissed. The motion to transfer is denied.

It is so **ORDERED** this the 15th day of October 2009.

A handwritten signature in black ink, appearing to read 'Stephanie R. Reeves', is written over a horizontal line.

STEPHANIE R. REEVERS
Claims Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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ALLEN MATHIS
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This _____ day of _____, 2009.

Marsha Richeson, Administrative Clerk
Tennessee Claims Commission